



TOWN OF HERNDON

**P.O. BOX 427
HERNDON, VA 20172
(703) 435-6800**

**INVITATION FOR BID
(SEALED)**

IFB #16-03

**CONTRACT MOWING SERVICES
SEALED BIDS MUST BE DELIVERED BY:**

September 23, 2015 at 3:00 pm

Charles J. Baker
Purchasing Agent

Town of Herndon
777 Lynn Street
P.O. Box 427
Herndon, VA 20172-0427

Fax Inquiries only to:

(703) 435-8121 or

Email inquiries to:

charles.baker@herndon-va.gov

**TOWN OF HERNDON
INVITATION FOR BIDS (IFB)
(SEALED)**

IFB Number: 16 - 03

Issue Date: August 25, 2015

Title: Contract Mowing Services

Issuing Entity: Purchasing Agent
777 Lynn Street
Herndon, Virginia 20172-0427

Period of Contract: Commencing upon the execution of the contract for one year with four (4) twelve-month renewal options

Worksites: Various Sites Throughout the Town

If bids are mailed, send directly to the Issuing Entity shown above. If bids are hand delivered, deliver to: Front Counter; 777 Lynn Street, Herndon, Virginia. Direct all inquiries for information to Charles J. Baker, Purchasing Agent at (703) 435-6800 ext. 2048 or at the above listed email address.

*******FACSIMILES ARE NOT ACCEPTED*******

In compliance with this Invitation for Bids (IFB) and subject to all conditions imposed therein, the undersigned agrees to furnish the services at the prices indicated on the Bidder's Official Town Bid Form, pages 14 - 15.

*** MANDATORY ATTENDANCE PRE-BID CONFERENCE/SITE VISIT:** A mandatory pre-bid/site visit is scheduled on September 9, 2015 9:00 am at 1479 Sterling Rd, Herndon, Virginia 20170.

A public bid opening will occur at 777 Lynn Street, Herndon, Virginia 20170, Second Floor Room on September 24, 2015 at 10:30 am.

Potential Bidders shall direct all questions or inquiries in writing **no later than September 16, 2015** to Charles J. Baker at 777 Lynn Street, Herndon, Virginia 20170 or charles.baker@herndon-va.gov. Revisions to the solicitation are made only by addendum issued by the Purchasing Office.

The Town will post the results of this bid opening and tabulations on its Procurement webpage, http://www.herndon-va.gov/Content/Town_Services/Finance_Purchasing/default.aspx?cnlid=195, on the Commonwealth of Virginia Department of General Services' central electronic procurement website (eVA) and on the Purchasing bulletin board prior to the official bid award.

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

INVITATION FOR BID
IFB # 16-03
CONTRACT MOWING SERVICES

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* denotes – must be returned with bid

1.0 PURPOSE

The purpose of this Invitation for Bid (IFB) is to obtain the services of a landscape Contractor that is licensed, qualified and experienced in maintaining grounds. This work shall include, but is not necessarily limited to, providing all labor, materials, equipment, supplies and services necessary to sustain and maintain in a healthy, attractive and safe condition, all turf, trees and other landscaping at the locations stated in this IFB. The period of this contract is for one (1) year from date of award with the option of four (4) additional one (1) year renewals.

2.0 BACKGROUND

The Town of Herndon is the third largest town in the Commonwealth of Virginia and home to more than 23,000 residents. Amidst a 21st century Northern Virginia landscape of high rise buildings, industrial complexes and transportation hubs, Herndon maintains a small town charm that is evident in its downtown, its neighborhoods and its commercial areas. Whether you are visiting for pleasure or business, you will enjoy the small town charm of this pre-Civil War town and the many attractions we offer. Packed with outstanding recreational activities, the award-winning Herndon Community Center offers many programs and events. Enjoy the town's 11 parks or take a hike on the W&OD Trail that runs through the heart of downtown Herndon. Or spend a day on the links at the Herndon Centennial Golf Course, named one of *Golf Digest's* "Places to Play."

3.0 CONTRACT PERIOD

The initial term of this contract is for one year commencing upon the date that the contract is fully executed. The contract has four (4) one-year optional renewals. Automatic renewals are not permitted.

4.0 INSTRUCTIONS TO BIDDERS

4.1 Competition Intended:

It is the Town's intent that this Invitation for Bid (IFB) permits competition. It is the Bidder's responsibility to advise the Purchasing Agent in writing if any language, requirement, specification, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this IFB to a single source. The Purchasing Agent must receive such notification not later than five (5) business days prior to the date set for acceptance of bids.

4.2 Bidder's Responsibility

Bidders shall examine the General Terms and Conditions, specifications, and moving locations of this Invitation for Bid and shall exercise their own judgment as to the nature and total amount of all work required. No plea of ignorance of conditions that exist or that may hereinafter exist, or of conditions or difficulties that the Contractor may encounter in the work as a result of failure to make the necessary examination and investigation is accepted as an excuse for any failure or omission on the part of the Bidder to fulfill, in every detail, the requirements of this

Invitation for Bid, or is accepted as a basis for any claims whatsoever for extra compensation.

4.3 Conditions for Bidding

A. Bid Forms

In order to be considered for selection, Bidders must submit a complete response to this solicitation. A complete response is required with the return of the following documents:

1. One (1) original and three (3) copies of the completed Bid package that includes the Bid on an Official Town of Herndon Bid Form signed by an authorized representative of the Bidder's firm, the Business, Professional and Occupation License, the completed References Form and the completed Contractor Certification, Agreement, and Affidavit; and
2. The Bidder shall deliver the entire Bid package to the proper location by the closing time and date as specified on the cover page.

B. Award Criteria

1. The Bidder shall provide all requested information on the Official Town Bid Form (i.e. Delivery, Terms, Bidder Name/Address/Phone No., Extended Price, Specifications Met, Signature, Printed Name and Date) for the Town to consider the Bid. Bidders should review the Official Town Bid Forms before submission to ensure there are no omissions or blanks.
2. An award is determined by the low bid based on the GRAND TOTAL of the sum of the total cost (unit cost multiplied by anticipated number of services) for each Item of the two sections in the Bid Form. The Bidder shall submit an all-inclusive Bid. The Town will not allow additional costs.
3. The Bid Form is divided into two sections:

The Standard Mowing, Landscaping and Related Services
section is an estimate of the number of regular cuts needed throughout the season.

The Intermittent Mowing, Landscaping and Related Services
section is an estimate of potential cuts required from time to time throughout the grass cutting season. There is no guarantee that the Town will use the Intermittent Mowing, Landscaping and Related Services.

4. Unless canceled or rejected, a responsive bid from the lowest responsible Bidder(s) shall be accepted as submitted, except that if the firm fixed price bids from the lowest responsive responsible

Bidders exceeds available funds, the Purchasing Agent or designee may negotiate with the apparent low Bidders to obtain a contract price within available funds.

5. By submitting their bids, all Bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

C. Contractor's Minimum Qualifications

Bidders must demonstrate that they have the resources and capability to provide mowing services with in-house staff as prescribed herein. The Bidder shall meet the following criteria for eligibility for this contract:

1. Bidders must demonstrate that their company is financially stable and that they have been in business providing similar service for at least the last three (3) years.
2. Bidders shall provide, at a minimum, the names, addresses and telephone numbers of at least three (3) other firms or government agencies for whom a similar type of work has been performed in the past twelve (12) months. The Bidder shall provide references from similar work done for a contract price that is at a minimum equal to seventy percent of the Grand Total of the Bidder's submitted price for this IFB.

5.0 SCOPE OF WORK

5.1 Public Ground Description (see also Attachment E: The Town Map, Attachment F: Median and Attachment G: Guardrail Footage).

- A. Sterling Road from Rockhill Road to Elden Street. This shall include the removal of all weeds in the seasonal planting area around the Gateway Signs, Veterans' Memorial Signs, and the berm area on the north side of 1479 Sterling Road, adjacent to Sterling Road. The berm area between 1479 and 1481 Sterling Road is not included. This Includes mowing approximately 100' of median, west of the Rock Hill Road intersection.
- B. Herndon Parkway, entire length, to include all signalized intersections. Mow all medians and the backside of the sidewalks.
- C. Monroe Street (south) Dulles Toll Road to Worldgate Drive; Van Buren Street from Worldgate to Herndon Parkway and from Spring Street to Grove Street.

- D. Monroe Street (north): Herndon Parkway to Grove Street.
- E. Dranesville Road: Bennett Street to Tyler Street.
- F. Spring Street: Elden Street to the intersection of Spring Street and Van Buren, then to the Town Corporate limit.
- G. Third Street: dead end east to Dranesville Road.
- H. Elden Street: Worldgate Drive to Fairfax County Parkway.
- I. Alabama Drive: Elden Street to Van Buren Street.
- J. Locust Street: from Elden Street to Spring Street.
- K. Haley Smith Park including vegetation control on all the fence lines, in-fields and warning tracks.
- L. Grove Street: Van Buren Street to Herndon Parkway.
- M. Chestnut Grove Cemetery: area outside fence and both sides, Dranesville Road and Herndon Parkway side.

5.2 Interment Work:

- N. Mulch around trees or shrubs
- O. Mulch general-per square foot
- P. Edging around curb or other fixed objects
- Q. Sodding
- R. Planting shrubs (not in median)
- S. Planting shrubs (in median), Contractor-provided traffic control required
- T. Trailside Park (entire park)
- U. Cuttermill Park (entire park)
- V. Aerify and over-seed & using solid-tine), per square yard. The Town will provide the seed and application rate.

5.3 Work Schedules:

The successful Bidder shall furnish, within ten days after award and prior to the first mowing, a written detailed work schedule for each location. The schedule must address the day of the week and approximate time, each day, a work crew will arrive.

No mowing shall occur at Trailside Park, Cuttermill Park, and Haley Smith Park during the hours of 11:30 a.m. through 12:30 p.m. mowing shall not be conducted.

When at or near school grounds, the Contractor shall conduct operations in such a manner as to maintain a safe working distance from any outside activities.

Mowing operations shall not begin until after the schedule is approved by the Town's representative and changes to the approved schedule will not occur without the written approval of the Town's representative.

The expectation is that the Contractor shall provide the services of this IFB on the day scheduled. If, at any time, the Contractor does not complete any service within five calendar days of the date in the approved schedule, except for an Act of God, the town has the right to perform the work in-house, or to obtain the services from another Contractor. The Town shall consider the successful Bidder in breach of the Contract if the assigned duties are not completed within the required time frame, and the town has the right to take appropriate action(s) as detailed in this IFB.

- 5.4 Exceptions to Specifications: Exceptions to specifications are not considered and, if offered in conjunction with the bid, shall result in a bid being declared non-responsive.
- 5.5 Turf Maintenance: All work shall be performed in a professional manner using trained employees and equipment that is in good repair. The Contractor shall provide and use approved mowing signs and safety equipment when needed in accordance with the Virginia Work Zone Safety Manual and Municipal Uniform Traffic Control Devices.
- 5.6 Mowing Requirements:
 - A. Mowing - All turf shall be mowed, as required, to maintain an attractive appearance at all times. Turf shall not be cut below 3 inches and shall not be allowed to reach a height greater than 4.5 inches. Mowing shall be done in a responsible manner to prevent damage to the turf. If any turf is damaged by the Contractor, the Contractor shall repair such areas at the Contractor's sole expense. The Contractor shall complete the mowing of all turf area within three (3) consecutive work days. If the required mowing area is wet, the Contractor shall make every effort to prevent damage to the turf. The Contractor shall use good judgment when determining how and if to mow in wet areas. The Contractor shall report problem wet areas to the Town's representative. Roadside mowing shall be one mower width behind the sidewalk.
 - B. Trimming - After each mowing, all obstacles, to include, but not limited to, trees, picnic areas, table, shrubbery/flowerbeds, telephone poles, guy wires, transformers, bleachers, fences, and walls shall be trimmed around to present a neat appearance. The Contractor shall move picnic tables and any other moveable tables, benches or other fixtures, unless secured to a foundation. The Contractor shall mow the area underneath the table, bench or fixture and then replace the table, bench or fixture replace back in its original location.

- C. Clean Up - Prior to mowing, successful Contractor shall remove all debris including, but not limited to, paper cans, bottles, bottle caps and sticks. Should the Contractor's employees miss items and mow/shred them, they shall go back and police up the debris. The Contractor shall clear grass clippings resulting from mowing operations from all paved areas and make every effort to avoid discharge of grass clippings onto paved areas. The Contractor must rake or vacuum excessive grass clippings and remove them from the work site.
- D. Edging – The Bidder shall maintain blade cut edging as part of the turf mowing operation by use of weed eaters or stick edging. The goal is to keep the top of curb visible and free of grass/weed encroachment and performed on monthly or bi monthly bases at the discretion of the Town representative.
- E. Mulching - The Bidder shall provide a unit cost (per occurrence) to perform mulching of all trees in the median area of the Herndon Parkway. The Contractor shall mulch the areas around trees to a depth of 1/2" to 2" annually. The bid price for mulching shall include the purchase, storage, pickup and delivery and placing of mulch and whatever else is need to provide the mulch to the Town in the desired locations. The Town shall accept no extra charges. Mulching shall begin in the spring, upon receipt of this contract. Mulching shall require removal of weeds and routine maintenance to keep the mulch beds weed free. The method of weed control is optional. The Contract shall see that the mulch is neatly piled and sloping away from the tree not bowled. Edging of mulch bed is not required.
- F. Tree Maintenance - Pruning maintenance is limited to that which is required to eliminate sucker shoots and problem limbs. The Contractor shall perform tree maintenance during each mowing, as required. The Contractor shall perform yearly pruning after the fall leaf drop, to prevent trees from growing onto the roadways and routine removal of sucker from shoots in early stages. Perform all pruning work in accordance with ANSI A-300 Tree Shrub and other Woody Plant maintenance standard practices.
- G. The bid price for all work under this contract shall include disposal. It is the Contractor's responsibility to dispose of trash, clippings, etc., promptly at a site approved by the Town. The Town will not allow for extra costs. Emptying of trash cans in the parks remains a Town responsibility.
- H. The bid price for all work under the contract shall include crack and crevice control. The Contractor shall insure that paved areas adjacent to the mowing areas (within 12 inches of the mowing perimeter) and sidewalks are kept free of weeds and grass. Method of control is the Contractor's option. This shall include vegetation control on all fence lines, skinned infields and warning tracks. The Town will not allow for extra costs.
- I. Sodding - The Contractor Shall ensure that the designated area for sodding is smooth, uniformed and in accordance with the required cross section. Surfaces prepared for sod require sufficient depth below unseated areas so

that newly laid sod is level with the surrounding surface. For those areas that are covered with topsoil, the Contractor shall use a power rake to remove the existing plantings and soil down to a depth such that, after the application of the fertilized and placement of new sod, the newly laid sod is level with the surrounding soil or equal to the previous height of the grass next to other surfaces.

Unless otherwise specified, the Contractor shall use sod with a mixture of Rye, Fescue and Kentucky Bluegrass. The Contractor shall provide the Town with the exact mix of the proposed sod for approval prior to placement.

The sod free from all primary noxious weeds is required. Noxious weeds are:

- 1) Canada Thistle
- 2) Field Bindweed
- 3) Johnson Grass
- 4) Quack Grass
- 5) Perennial Peppergrass
- 6) Perennial Sowthistle
- 7) Russian Knapweed
- 8) Wild Garlic

After the area has been prepared for sod, fertilizer is applied at the rate of 400 pounds/acre. The surface is loosened to a depth of 1 to 2 inches and then raked before the sod is placed. The Contractor shall ensure that all clods, lumps, boulders, or waste material are removed.

In areas where the above method of preparation is impracticable, a different method may be approved. Notching to a sufficient depth is required, for sod such that newly laid sod is level with the surrounding soil surface. Notching eliminates the possibility of the sod edges from drying out and dying. The Contractor shall perform notching when sodding is laid adjacent to:

- 1) Surrounding soil
- 2) Sidewalk and curb or other man-made structures
- 3) Existing sod
- 4) Pavement

Notching is not required along paved side ditch, end sections and graded box end sections, or curbs along slope walls.

LAYING SOD

The Contractor shall lay sod strips by hand in the designated direction. The sod is fitted to the surrounding grade and fixed objects and is butted together closely to avoid open joints. Overlapping of sod is not permitted. After laying and initial watering, the sod is tamped or rolled to ensure contact with the soil underneath and is level with the surrounding surface. After compaction, the sod is required to present a smooth even surface free

from lumps and depressions. On slopes of 3:1 or flatter, the use of broken sod strips is permitted. Where broken pieces are laid, no overlaps are allowed.

The Contractor shall peg sod placed in ditches with grades steeper than 1 % and on slopes 3:1 and steeper. The pegs are spaced not over 2 feet apart in each strip measured lengthwise of the strip. It is required that pegs are driven down until no more than 1 in. protrudes above the surface of the sod. For grades and slopes flatter than specified herein peg as directed by the Town representatives. The Contractor may use four (4) inch or six (6) inch sod staples one (1) foot apart or substitute T-shaped wire pins. The Contractor shall ensure that the T-shaped pins are machine bent from 8 gage low carbon steel with a minimum of an 8 in. leg, a 4 in. head, and a 1 in. secondary drive. Pins are driven flush with the top of the sod.

WATERING SOD

Sod is watered immediately after laying. The Contractor shall ensure that the amount of watering is sufficient to saturate the sod and the upper few inches of the underlying soil, and that watering is performed at least once each day of the first week, once every second day of the second week, once every third day of the third week, and once a week thereafter. Sod is maintained for a minimum of four weeks from the time the sod is laid before being accepted. If during periods of ample rainfall, the Contractor may modify the watering schedule to simulate the above schedule. During the months of June, July, and August, the Contractor shall lay only Sod that is in good, live, growing condition and placed within 36 hour after cutting. The Contractor shall ensure that the Sod is protected from damage during the first 36 hour period. Winter sodding is allowed when the temperature is above 35° F. The laying of frozen Sod or Sod on frozen soil is not allowed. The Contractor shall ensure that Sod laid during the winter is properly protected from drying and laid within 48 hours after cutting.

- 5.7 The Contractor's equipment shall meet all applicable State, Federal and OSHA safety requirements. Only equipment manufactured specifically for finish mowing is acceptable. The Contractor shall maintain as per manufacturer's recommendations. To ensure that turf is cut cleanly and uniformly, the Contractor shall ensure that equipment cutting edges are maintained. The use of dull cutting edges is strictly prohibited. The Contractor shall ensure that all designed safety shield devices are in place and in good working order. Brush hogs are not acceptable for mowing except ditch line areas and sewer line easement if specified.
- A. The Contractor shall permit initial and ongoing inspection of equipment and safety training records.
 - B. The Contractor is responsible for any and all personal and property damage caused from the Contractor's operations to include, but not limited to, flying debris or injury by equipment to employees, citizens or town personnel as a result of his or her equipment or employees.

- C. The Contractor shall carry oil and fluid absorbent material at all times for use in the event of a fluid leak.
- D. The Contractor shall not bring any equipment onto Town property that contains any fluid leaks. Should a piece of equipment develop a fluid leak, the Contractor shall immediately take necessary action to contain the fluid and make repairs. The Contractor is responsible for the complete cleanup and restoration of affected areas in accordance with all federal, regional, state and local regulations and requirements, including OSHA and storm water regulations and requirements.
- E. The Contractor shall ensure that all materials used to clean up fluid spills are properly disposed of at the Contractor's expense.
- F. The Contractor shall provide a list of all equipment proposed for use on this project with its bid.
- G. The Contractor shall ensure that all Contractor-owned vehicles are parked in such a manner that they do not block or impede vehicular or pedestrian traffic. The Contractor shall ensure that employees obey all traffic and parking restrictions including using the truck route by all vehicles that qualify for its use.

6.0 GENERAL SERVICE REQUIREMENTS

- 6.1 Work Area Tours: The Town will conduct a tour of the mowing and mulched areas after the mandatory pre-bid conference on September 9, 2015 at 9:00AM. The tour will depart from the Maintenance Facility located at 1479 Sterling Road, Herndon, Virginia 20170.
- 6.2 Landscape Supervision: The Contractor shall provide a supervisor/foreman, fluent in the English language, on site at all times while work is being performed. During the first mowing exercise, the Contractor shall introduce his supervisor/foreman to the Town's representative. Additional points of contact and telephone/beeper numbers for resolution of problems shall also be provided. The Contractor shall instruct its workers not to encroach upon private property for any reason (i.e. taking breaks, picking fruit, etc.).
 - A. The Contractor shall ensure that employees are appropriately dressed while on Town property, and provide the Town's Grounds Crew Supervisor a work schedule prior to the start of any work. All personnel shall wear shirts or tank tops, shorts/pants and wear safety equipment (work shoes, safety glasses and hearing protection, as appropriate).
 - B. The Contractor shall not solicit or advertise while on Town property.
 - C. The Contractor shall furnish an up-to-date list of its employees assigned to the contract and their qualifications prior to work commencing.
 - D. The Contractor shall have a minimum of four workers on site to assure the work is being completed in a timely manner.

- 6.3 Town Inspections: The Town's representative shall perform routine inspections of the Contractor's work and may conduct unannounced inspections of equipment at any time while the equipment is on Town property. If problems or deficiencies should exist, the Town's representative shall note the problems and advise the Contractor's supervisor/foreman for immediate corrective action.
- 6.4 Safety: For the protection of Contractor's personnel, the Contractor is required to provide OSHA safety training, safety equipment (safety vests and hard hats are required) and signage, conforming to MUTCD standards and the Virginia Work Area Protection manual, when work is performed in traffic areas. Mowing and edging equipment shall be operated in a safe and responsible manner that shall not endanger vehicles, pedestrians, or the operator. The Town's representative reserves the right to halt work for failure to observe proper safety precautions. Work may not resume until his approval is given and property safety measures have been instituted.
- 6.5 Water: The Contractor shall use a meter for any water used from a fire hydrant and paid for by the Contractor. The meter must come from Town of Herndon and the Contractor shall obtain the meter by contacting the Town Shop located at 1479 Sterling Road, Herndon, Virginia, at (703) 435-6860 between the hours of 7:00 am and 4:00 pm, Monday through Friday, holidays excluded.
- 6.6 Damage to Turf, Trees, Shrubs and Facilities: Property and landscape damage as a result of the Contractor's operations will result in a liquidated damage assessment against the Contractor. The Town will deduct one half of one percent (0.5) of the bid amount for the mowing operation from the invoice for payment of each mowing operation resulting in damage to turf, trees, shrubs and or facilities. Additionally, the Town will submit any and all claims for repair or replacement of the damaged property to the Contractor's insurance company.
- 6.7 Use of Chemicals: The Contract may request written authorization from the Town's representatives to use Herbicides, if desired. Individuals applying such chemicals shall possess a valid Virginia State Applicators License. The Contractor shall notify the Town's representative 48 hours prior to the actual application of chemicals and shall include Material Safety Data Sheets (MSDS) for chemicals proposed for use. The Contractor shall flag all areas and adjacent areas of herbicides application to warn the public of its presence. The Contractor is responsible for all vegetation not limited to trees, shrubbery and flowers that is damaged by machinery or chemicals. If damage does occur the Contractor is responsible for its replacement at the Contractor's expense.
- 6.8 Security:
- All Town buildings and right-of-way:
 1. 24 hour notification of when work is to be performed.
 2. All employees must wear company uniform
 3. All employees to have a current photo ID on their person.
 4. Full name of the work crew supervisor and an office and cell phone number where he/she is reachable.



Official Town Bid Form

This is not a Contract

Invitation No: IFB 16 - 03	Invitation Service: Contract Mowing Services		Bid Opening:	
Delivery: As required by Contract	Terms:	NOTICE TO ALL BIDDERS: All equipment and/or services provided under this Invitation for Bid shall conform to the specifications and all terms and conditions as set forth in the attached.		
BIDDER NAME AND ADDRESS:				
PHONE NUMBER:				
STANDARD MOWING, LANDSCAPING AND RELATED SERVICES				
ITEM #	ITEM & DESCRIPTION	UNIT PRICE PER SERVICE	ANTICIPATED # OF SERVICES	TOTAL COST
1	Sterling Road: Rockhill Road to Elden Street		27	
2	Herndon Parkway: entire length		27	
3	Monroe Street (south): Dulles Toll Road to Worldgate Drive; Van Buren Street from Worldgate to Herndon Parkway, and from Spring St to Grove Street		27	
4	Monroe Street (north): Herndon Parkway to Grove Street		27	
5	Dranesville Road: Bennett Street to Tyler Street		27	
6	Spring Street: Elden Street to the intersection of Spring Street and Van Buren, then to the Town Corporate limit.		27	
7	Third Street: dead end east to Dranesville Road		27	

8	Elden Street: Worldgate to Fairfax County Parkway		27	
9	Alabama Drive: Elden Street to Van Buren Street		27	
10	Locust Street: Elden Street to Spring Street		27	
11	Haley Smith Park (entire park)		27	
12	Grove Street: Van Buren Street to Herndon Parkway		27	
13	Chestnut Grove Cemetery: area outside fence		27	
STANDARD MOWING, LANDSCAPING AND RELATED SERVICES – TOTAL COST				
INTERMITTENT MOWING, LANDSCAPING AND RELATED SERVICES				
ITEM #	ITEM AND DESCRIPTION	UNIT PRICE	ANTICIPATED # OF SERVICES	TOTAL COST
14	Mulch (around trees or shrubs per each)		50	
15	Mulch (general – per square foot)		5,000	
16	Edging around curb or other fixed objects (per linear foot)		5,280	
17	Sod (per square yard)		300	
18	Planting shrubs (each – not in median)		30	
19	Planting shrubs (each – in median, traffic control required)		30	
20	Trailside Park (entire park)		3	
21	Cuttermill Park (entire park)		3	
22	Aerify and over-seed (using solid-tine, per square yard)		1,000	
INTERMITTENT MOWING, LANDSCAPING AND RELATED SERVICES – TOTAL COST				
TOTAL BID AMOUNT: STANDARD PLUS INTERMITTENT SERVICES – GRAND TOTAL				

By signing this bid, Bidder certifies, acknowledges, understands and agrees to be bound by the conditions set forth in the contents of the bid including the General Terms and Conditions.

SIGNATURE _____

PRINT NAME _____ DATE _____

****NOTE****

The dimensions provide above are the Town's best estimates of the footage, linear feet, etc. and the Contractor is advised to visit the site and make calculates. However, the Contractor shall include all costs within their bid.

ATTACHMENT A

EQUIPMENT LIST

Please list below all proposed equipment and its condition for use during this contract. Please attach additional pages if necessary.

<u>Equipment</u>	<u>Condition</u>

ATTACHMENT B

BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE

All firms located or operating in the Town of Herndon must obtain a Business, Professional and Occupational License (BPOL) as required in the Municipal Code, Article VII and local license tax authorized, Code of Virginia, § 58.1-3700 et seq.

In order for the Department of Tax Administration to determine BPOL requirement prior to contract award, it is necessary to provide the following information:

- If you currently have a Town of Herndon business license, please submit a copy with your bid/proposal.
- Do you have an office in: Virginia ☐ yes ☐ no
 Town of Herndon ☐ yes ☐ no
- Date business began/will begin work in the Town of Herndon

Provide a description of the business activity that will take place in the Town of Herndon:

Authorized Signature

Date

Please return this form and a copy of current Town of Herndon business license in bid/proposal. The omission of this form may delay or void the awarding of the Contract.

ATTACHMENT C REFERENCES

Contractor shall provide information regarding experience in the contract mowing services by listing three (3) most recent clients. Greater emphasis shall be given to experience function at facilities of comparable size and nature of that specified for the Town. At least two (2) references should be within the Northern Virginian Area so that the Town can confirm past performance by a physical site inspection by Town staff.

1. Company Name: _____
 Contact: _____
 Phone Number: _____
 Area Serviced: _____ Size: _____ Type: _____
 Job Dates: _____ Beginning: _____ End: _____

2. Company Name: _____
 Contact: _____
 Phone Number: _____
 Area Service: _____ Size: _____ Type: _____
 Job Dates: _____ Beginning: _____ End: _____

3. Company Name: _____
 Contact: _____
 Phone Number: _____
 Area Serviced: _____ Size: _____ Type: _____
 Job Dates: _____ Beginning: _____ End: _____

ATTACHMENT D
TOWN OF HERNDON

Contractor Certification, Agreement, and Affidavit
As to Eligibility for Employment in the United States

Affidavit

This _____ day of _____ 20__ appeared before me, a notary public for the jurisdiction identified _____ below, _____ the _____ of _____ (Contractor) who after being duly sworn made oath as follows:

1. This instrument supplements and is part of the contract between the Town of Herndon, Virginia (Town) and _____ Contractor (contract).
2. The consideration to support this instrument is the same consideration that supports the contract.
3. Contractor certifies that it does not and will not during the performance of this contract violate (i) the provisions of the Federal Immigration Reform and Control Act of 1986, as amended, and §40.1-11.1, Code of Virginia, which prohibit the employment of aliens not legally eligible for employment in the United States, and (ii) the provisions of Federal and State employment and wage hour laws. To carry out and support a major element of the above certification, the Contractor certifies to the Town that all Contractors' employees and all employees of each of Contractor's subcontractors working on the subject of this contract are legally eligible for employment in the United States.
4. As to each such employee the federal I-9 employment eligibility verification process, or federal Employment Eligibility Verification (E-Verify) Program, or both, has been undergone.
5. Contractor agrees to update this assurance for new employees and to be audited by the Town for compliance with the contractual provision identified as in 3(i) above. During this audit, Contractor shall provide Town access to any public documentation that relates to verifying the employees' legal eligibility for employment in the United States and that relates to employees of the Contractor or of any subcontractor working on the subject of this contract, in cases where the Town harbors a reasonable suspicion that such employee(s) may be not legally eligible for employment in the United States. The documentation will indicate that the federal I-9 employment eligibility verification process or the federal Employment Eligibility Verification (E-Verify) Program or both as to each such employee has been undergone. The Contractor shall not produce documentation in this regard that is explicitly prohibited by federal or Virginia law from public disclosure.

6. The Contractor shall include and enforce the language in this paragraph in every subcontract issued under this contract and shall require the subcontractor to do the same.

[Contractor]

Name: _____

By: _____

Title: _____

Commonwealth of Virginia:

County of Fairfax:

Subscribed, sworn to, and acknowledged this _____ day of _____ 20____, by
_____ the _____ of
_____ [Contractor], a
_____ [here put type of entity], on behalf of this entity.

Notary Public

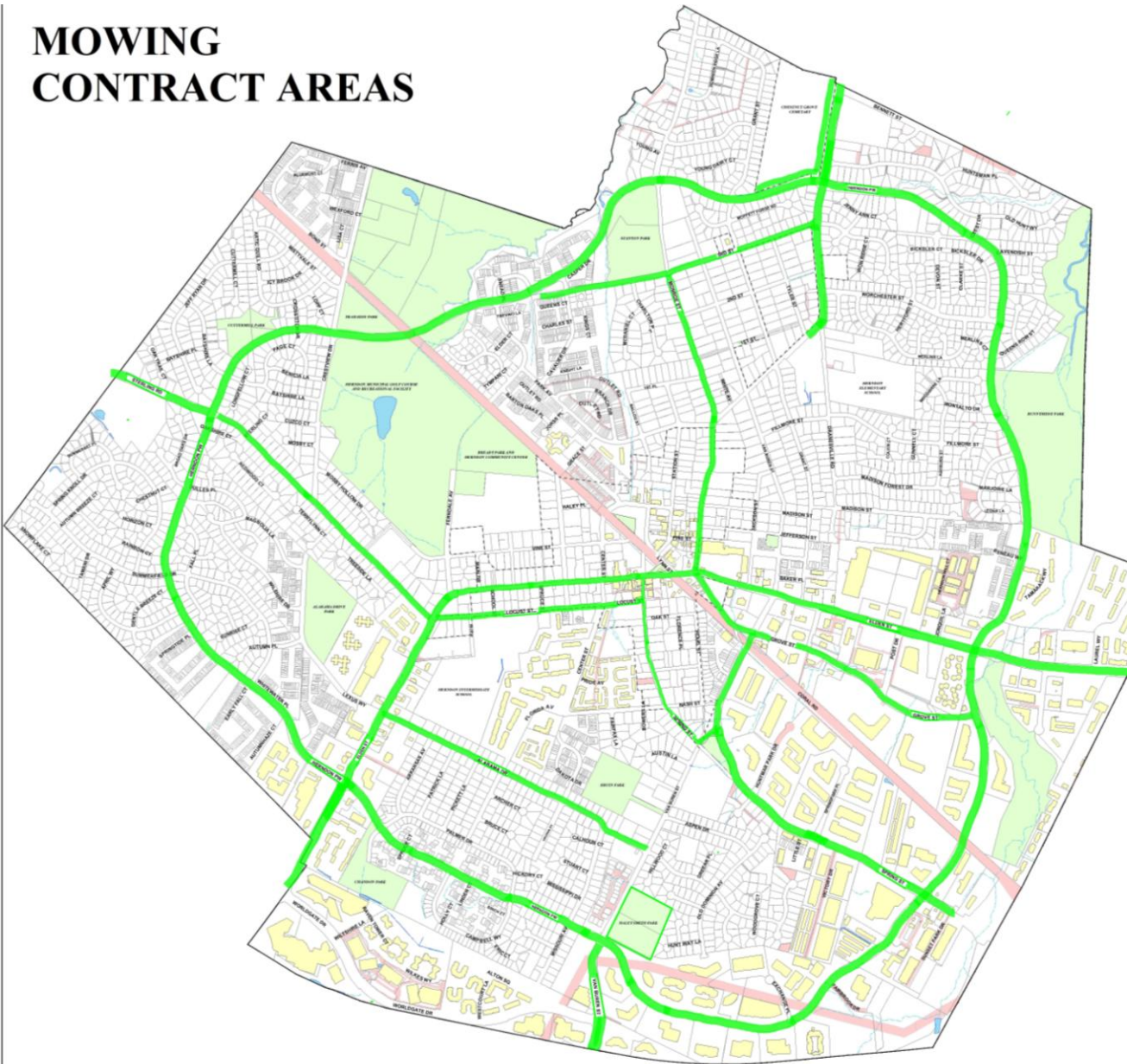
My commission expires: _____

Notary registration number: _____

Please return this executed form with bid or proposal. Contract award will not be considered if omitted.

Attachment E

MOWING CONTRACT AREAS



1 inch = 500 feet



This map was prepared by the Town of Herndon GIS 11/12/10
PDF version of this map may not print to indicated scale.
Please contact the appropriate Town department for source
information for the features represented on this map. For reference
purposes only.

Sources:
- Parcels: Fairfax County GIS



Mowing Contract Areas

Attachment F Median Footage

		MEDIANS		
	STREET NAME BEGIN		STREET NAME END	Median footage
	Herndon Parkway - Medians - linear footage			
	Elden St (Giant)	1025	Herndon Parkway	397
1025	Herndon Parkway	1175	Herndon Parkway	273
1175	Herndon Parkway		Wintergreen Ln	543
	Wintergreen Ln		Early Fall Ct	244
	Early Fall Ct		Springtide Pl	547
	Springtide Pl		Springtide Pl	281
	Springtide Pl		Summerfield Dr	692
	Summerfield Dr		Dulles Pl	1,069
	Dulles Pl		Sterling Rd	863
	Sterling Rd		Bayshire Ln	440
	Bayshire Ln		Crosstitch Dr	1,034
	Crosstitch Dr		Crestview Dr	401
	Crestview Dr		Ferndale Ave	2,010
	Ferndale Ave		Cavalier Dr	774
	Cavalier Dr		trail opening	975
	trail opening		Monroe St	640
	Monroe St		Grant St	872
	Grant St		Dranesville Rd	1,066
	Dranesville Rd		Cavendish St	2,296
	Cavendish St		Worcester St	756
	Worcester St		Queens Row St	357
	Queens Row St		Leona Ln	1,212
	Leona Ln		Reneau Way	1,280
	Reneau Way		Cordell Way	510
	Cordell Way	299	Herndon Parkway	211
299	Herndon Parkway		Elden St	358
	Elden St		Grove St	679
	Grove St	365	Herndon Parkway	543
365	Herndon Parkway	397	Herndon Parkway	625
397	Herndon Parkway		Spring St	1,026
	Spring St	462	Herndon Parkway	572
462	Herndon Parkway	466	Herndon Parkway	330
466	Herndon Parkway	510	Herndon Parkway	418
510	Herndon Parkway		Exchange Pl	575
	Exchange Pl	560	Herndon Parkway	695
560	Herndon Parkway	570	Herndon Parkway	494
570	Herndon Parkway	620	Herndon Parkway	525
620	Herndon Parkway		Van Buren St	688

664	Herndon Parkway		Palmer Dr	91
	Palmer Dr		Maple Ct	459
	Maple Ct		Campbell Way	266
	Campbell Way		Magnolia Ct	200
	Magnolia Ct		Spruce Ct	323
	Spruce Ct		Palmer Dr	321
	Palmer Dr	950	Herndon Parkway	201
950	Herndon Parkway		Elden St	398
			TOTAL	29,530
Elden Street medians				
	Herndon Parkway		Carlisle Dr	804
	Carlisle Dr		Laurel Way	494
	Laurel Way		Fairfax Parkway	395
	Jonquil Ln		Post Dr	309
	Post Dr		Holiday Inn Entrance	488
			TOTAL	2,490
Van Buren Street medians				
	Herndon Parkway	205	Van Buren	418
205	Van Buren St		Worldgate Dr	436
	Worldgate Dr		Toll Rd	325
			TOTAL	1,179
Sterling Road medians				
	Rockhill Rd		Herndon Parkway	1,307
			TOTAL	1,307
Dranesville Road medians				
	Old Hunt Way		Cemetery Entrance	71
860	Dranesville Rd		Bennett St	315
807	Dranesville Rd		Third St	257
	Third St		Worcester St	732
	Worcester St		Old Dranesville Rd	363
			TOTAL	1,738
Park Avenue medians				
	Dranesville Rd		Tyler St	126
			TOTAL	126
Van Buren Street medians				
	Elden St		Spring St	
	Trail		Anthem Ave	427
	Anthem Ave		Spring St	625
			TOTAL	1,052
Spring Street medians				
	Van Buren St		St Tim Church Entrance	483
	St Tim Church Entrance		Adele Garden Way	
	Adele Garden Way		Gracie Park Dr	828
	Gracie Park Dr		Victory Dr	177
317	Victory Dr	366	Victory Dr	202

366	Victory Dr	200	Spring St Entrance	443
200	Spring St		Herndon Parkway	269
	Herndon Parkway		Sunset Park Dr	274
	Sunset Park Dr		Traffic Signal	233
	Traffic Signal		Fairfax Parkway Bridge	292
			TOTAL	3,201
Grove Street medians				
	Herndon Parkway	399	Grove St	435
399	Grove St		Post Dr	591
	Post Dr	501	Grove St	693
			TOTAL	1,719
Park Avenue medians				
	Elden St			108
			TOTAL	108
	GRAND TOTAL – MEDIANS (linear feet)			42,450

(Vendor: The general rules and conditions that follow apply to all purchases and become a definite part of each formal solicitation and resulting Contract award issued by the Town of Herndon, unless otherwise specified. Bidders, Offerors, Contractors, Vendors or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, scope of work or specifications before submitting bids or proposals; failure to do so is, solely, at the Bidders', Offerors', Contractors' or Vendors' own risk and relief cannot be secured on the plea of error.)

Subject to all State and local laws, policies, resolutions, and regulations and all accepted rules, regulations and limitations imposed by legislation of the Federal Government, bids or proposals on all solicitations issued by Town of Herndon will bind Bidders or Offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

AUTHORITY – The Procurement Official has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, Contract and/or purchase order (except for capital construction projects) issued by the Town. In the discharge of these responsibilities, the Procurement Official may have the assistance by assigned buyers. Unless specifically delegated by the Procurement Official, no other Town officer or employee is authorized to order supplies or services, enter into purchase negotiations or Contracts, or in any way obligate the government of the Town for indebtedness. Any purchase ordered or Contract made that is contrary to these provisions and authorities shall have no effect and is void and the Town is not bound thereby.

DEFINITIONS –

AGENCY: Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the Town.

BEST VALUE: As predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that, in total, are optimal relative to a public body's needs.

BID: The offer of a Bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.

BIDDER: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Procurement Official and offering to enter into Contracts with the Town.

CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the Town.

GOODS: All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.

INFORMALITY: A minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid or the request for proposal that does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

INVITATION FOR BID (IFB): A request that is made to prospective suppliers (Bidders) for their quotation on goods or services desired by the Town. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

OFFEROR: Any individual, company, firm, corporation, partnership or other organization submitting a proposal to solicitations issued by the Procurement Official and offering to enter into Contracts with the Town.

PROFESSIONAL SERVICES: Any type of work that is performed by an independent Contractor within the scope of the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering (that is procured as set forth in the Code of Virginia §2.2-4301). in the definition of competitive negotiation and in conformance with the Purchasing Regulations, required but not furnished by its own employees, that is in its nature so unique that obtaining it requires negotiation on the basis of demonstrated competence and qualification for the type of professional service required and at fair and reasonable compensation rather than by competitive sealed bidding.

PROCUREMENT OFFICIAL: The Procurement Official employed by the Town Council of the Town of Herndon.

REQUEST FOR PROPOSAL (RFP): A solicitation that is part of the competitive negotiation process and indicating in general terms that which is sought for acquisition from the Offeror. The RFP will specify the factors used to evaluate the Offeror's proposal and will contain or incorporate by reference other contractual terms and conditions including any unique capabilities, specifications or qualifications applicable to the procurement.

RESPONSIBLE BIDDER/OFFEROR: An individual, company, firm, corporation, partnership or other organization having the capability in all respects to perform fully the Contract requirements, and also having the moral and business integrity and reliability that will assure good faith performance, and having been prequalified, if required.

RESPONSIVE BIDDER/OFFEROR: An individual, company, firm, corporation, partnership or other organization having submitted a bid or proposal that conforms in all material respects to the invitation for bid or request for proposal.

SERVICES: Any work performed by an independent Contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

SOLICITATION: The process of notifying prospective Bidders or Offerors that the Town wishes to receive bids or proposals on a set of requirements to provide goods or services. The notification of the Town requirements may consist of public advertising (newspaper, Town Web Site, or other electronic notification), the mailing of Notices of Solicitation, Invitation for Bid (IFB) or Request for Proposal (RFP) or telephone calls to prospective Bidders.

STATE: Commonwealth of Virginia.

GENERAL TERMS and CONDITIONS

CONDITIONS OF BIDDING/BID PREPARATIONS

1. **CLARIFICATION OF TERMS:** If any prospective Bidder/Offeror has questions about the specifications or other solicitation documents, the prospective Bidder/Offeror should contact, **in writing**, the Chief of Revenue & Procurement NO LATER THAN TEN (10) WORKING DAYS BEFORE due date. Revisions to the solicitation are made only by addendum issued by the Purchasing Office. The Town reserves the right to answer the questions in writing, by voice telephone, or by fax and will supply the same information to all known prospective Bidders/Offerors.
2. **BID FORMS** – Unless otherwise specified in the solicitation, all bids shall be submitted on the forms provided, to include the bid Cover Sheet and Pricing Schedule(s), properly signed in ink in the proper spaces and submitted in a sealed envelope provided with the solicitation. The item pages of the Pricing Schedule which do not include any items for which a bid is required need not be included in the submission of a bid. Should the bid prices and/or any other submissions differ on the copy of the submitted bid, the ORIGINAL copy shall prevail.

3. LATE BIDS & MODIFICATIONS OF BIDS –

a. Any bid/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/modification is considered a late bid/modification. The time/date stamp clock located in the Purchasing Department shall serve as the official authority to determine lateness of any bid. A late bid/modification will not be considered for award except under the following conditions only:

1. It was sent by registered or certified mail not later than the fifth (5th) calendar date prior to the date specified for receipt of the bid/modification; or

2. The bid/modification was sent by mail and it is determined by the Procurement Official that the late receipt was due solely to mishandling by the Town after receipt at the address specified in the solicitation.

b. If the Town declares administrative or liberal leave, scheduled bid openings or receipt of proposals will be extended to the next business day.

c. The time of receipt of bids at the specified location is the time-date stamp of such location on the bid wrapper or other documentary evidence of receipt maintained by the specified location.

d. Bids shall be received in the Purchasing Department from the hours of 7:30 – 4:30 Monday – Friday. The Town accepts no liability for late or non-receipt of bids. The Town will, also, not consider for award a late hand-carried bid, or any other late bid not submitted by mail.

4. WITHDRAWAL OF BIDS –

a. A Bidder for a public construction Contract, other than a Contract for construction or maintenance of public highways, may withdraw his or her bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a Bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The Bidder shall give notice in writing to the Procurement Official of his or her claim of right to withdraw his or her bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.

b. A Bidder for a Contract other than for public construction may request withdrawal of his or her bid under the following circumstances:

1. Requests for withdrawal of bids prior to opening of such bids shall be transmitted to the Procurement Official in writing.

2. Requests for withdrawal of bids after opening of such bids but prior to award shall be transmitted to the Procurement Official, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the

error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the Town may exercise its right of collection.

c. No bid may be withdrawn under this paragraph when the result would be the awarding of the Contract on another bid of the same Bidder or of another Bidder in which the ownership of the withdrawing Bidder is more than five percent.

d. If a bid is withdrawn under the Town of this paragraph, the lowest remaining bid shall be deemed to be the low bid.

e. No Bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

f. If the Town denies the withdrawal of a bid under the provisions of this paragraph, it shall notify the Bidder in writing stating the reasons for its decision and award the Contract to such Bidder at the bid price, provided such Bidder is a responsible and responsive Bidder.

g. Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information subject to the conditions of the Virginia Freedom of Information Act.

5. **ERRORS IN BIDS** – When an error is made in extending total prices, the unit bid price will govern. Erasures in bids must be initialed by the Bidder. Carelessness in quoting prices or in preparation of bid otherwise, will not relieve the Bidder. Bidders are cautioned to recheck their bids for possible error. Errors discovered after public opening cannot be corrected and the Bidder will be required to perform if his or her bid is accepted.
6. **IDENTIFICATION OF BID/PROPOSAL ENVELOPE** – The Bidder shall return the signed bid/proposal and requested copies in a separate envelope or package, sealed and identified with the following information:

From: _____		
Name of Bidder/Offeror	Due Date	Time

Street or Box Number	City, State, Zip Code	
_____	_____	
IFB/RFP Number	Title	

Name of Contract/Purchase Officer or Buyer		

If a bid/proposal is not addressed with the information as shown above, the Bidder/Offeror takes the risk of the inadvertently opened envelope that would compromise the information, resulting in the bid/proposal being disqualified. The Bidder may hand deliver the Bids/Proposals to the designated location in the office issuing the solicitation. The Bidder shall not place any other correspondence or other proposals in the envelope.

7. **COMPLETENESS** – The Bidder shall include all information by the solicitation to ensure that a bid is considered responsive.
8. **ACCEPTANCE OF BIDS/PROPOSALS** – Unless otherwise specified, all formal bids/proposals submitted shall be valid for a minimum period of one hundred twenty (120) calendar days following the date established for acceptance. At the end of the one hundred twenty

(120) calendar days the bid/proposal may be withdrawn at the written request of the Bidder/Offeror. If the proposal is not withdrawn at that time, it remains in effect until an award is made or the solicitation is canceled.

9. **MANDATORY PREBID/PREPROPOSAL CONFERENCE** - A mandatory pre-bid conference is scheduled for September 9, 2015 at 9:00 a.m. at 1479 Sterling Road, Herndon, VA 20170. . The purpose of this conference is to allow potential Bidders an opportunity to present questions and obtain clarifications relative to any facet of this solicitation. Due to the importance of all Bidders having a clear understanding of the specifications/scope of work and requirements of this solicitation, attendance at this conference is a prerequisite for submitting a Bid. The Town will accept Bids only from those Bidders who are represented at this pre-bid conference. Attendance at the conference is evidence by the representative's signature on the attendance roster. No potential Bidders are admitted after 9:15 a.m. Bring a copy of the solicitation with you. The Procurement Official will issue a written addendum to the solicitation with any changes resulting from this conference.
10. **CONDITIONAL BIDS** – Conditional bids are subject to rejection in whole or in part.
11. **BIDS FOR ALL OR PART** – Unless otherwise specified by the Procurement Official or by the Bidder, the Procurement Official reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the Town. A Bidder may restrict his or her bid to consideration in the aggregate by so stating but shall name a single unit price on each item bid. Any bid in which the Bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.
12. **TIME FOR RECEIVING BID** – Bids received prior to the time of opening are securely kept, unopened. The representative of the Procurement Official assigned to open them will decide when the specified time has arrived, and no bid received thereafter is considered. No responsibility will attach to the Procurement Official or his or her representative for the premature opening of a bid not properly addressed and identified. The Procurement Official will not consider telegraphic, electronic, or facsimile bids/modifications, unless specifically authorized in the solicitation.
13. **BID OPENING** – The Procurement Officer or designee will open all bids received in response to an Invitation for Bid (IFB) at the date, time and place specified, read publicly, and made available for inspection.
14. **BIDDER INTERESTED IN MORE THAN ONE BID** – The Procurement Officer or designee will reject multiple bids, if more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons. A party who has quoted prices on work, materials, or supplies to a Bidder is not thereby disqualified from quoting prices to other Bidders or firms submitting a bid directly for the work, materials or supplies.
15. **TIE-BIDS** – If all bids are for the same total amount or unit price (including authorized discounts and delivery times), and if the public interest will not permit the delay of re-advertisement for bids, the Procurement Official is authorized to award the Contract to the resident to the Town tie Bidder whose firm has its principal place of business in the Town, or if there are none, to the resident of Virginia tie Bidder, or if there are none, to one of the tie Bidders by drawing lots in public; or the Procurement Official may purchase the goods or services in the open market except that the price paid shall not exceed the lowest Contract bid price submitted for the same goods or services. The decision of the Town to make award to one or more such Bidders is final.
16. **APPEAL OF DENIAL OF WITHDRAWAL OF BID** –
 - a. A decision denying withdrawal of a bid submitted by a Bidder is final and conclusive unless the Bidder appeals the decision within the (10) days after receipt of the decision by instituting legal

action as provided in the Code of Virginia. The Bidder may not institute legal action until all statutory requirements have been met.

b. If no bid bond was posted, a Bidder refused withdrawal of bid under the provisions of the Purchasing Regulations, prior to appealing, shall deliver to the Town a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. The release of such security will occur only upon a final determination that the Bidder was entitled to withdraw the bid.

c. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.

17. APPEAL OF DETERMINATION OF NONRESPONSIBILITY –

a. Any Bidder who, despite being the apparent low Bidder, is determined not to be a responsible Bidder for a particular Town Contract shall be notified in writing by the Procurement Official. Such notice shall state the basis for the determination, which shall be final unless the Bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The Bidder may not institute legal action until all statutory requirements have been met.

b. If, upon appeal, it is determined that the decision of the Procurement Official was arbitrary or capricious and the award for the particular Town Contract in question has not been made, the sole relief available to the Bidder shall be a finding that the Bidders a responsible Bidder for the Town Contract in question. Where the award has been made and performance has begun, the Town may declare the Contract void upon a finding that this action is in the best interest of the public. Where a Contract is declared void, the performing Contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

18. PROTEST OF AWARD OR DECISION TO AWARD –

a. Any Bidder or Offeror may protest the award or decision to award a Contract by submitting a protest in writing to the Procurement Official, or an official designated by the Town, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential Bidder or Offeror on a Contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such Contract shall submit such protest in the same manner no later than ten (10) days after posting or publication of the notice of such Contract. However, if the protest of any actual or potential Bidder or Offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such Bidder or Offeror or at such later time. No protest shall lie for a claim that the selected Bidder or Offeror is not a responsible Bidder or Offeror. The written protest shall include the basis for the protest and the relief sought. The Procurement Official shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the Bidder or Offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia.

b. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Procurement Official shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a Contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the Contract may be declared void by the Town. Where the award has been made and performance has begun, the Procurement Official may declare the Contract void upon a finding that this action is in the best

interest of the Town. Where a Contract is declared void, the performing Contractor shall be compensated for the cost of performance at the rate specified in the Contract up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

c. Pending final determination of a protest or appeal, the validity of a Contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.

d. An award need not be delayed for the period allowed a Bidder or Offeror to protest, but in the event of a timely protest, no further action to award the Contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

19. **LEGAL ACTION** – No Bidder, Offeror, potential Bidder or Offeror, or Contractor shall institute any legal action until all statutory requirements have been met.

20. **PRICE REDUCTION** – If at any time after the date of the bid the Contractor makes a general price reduction in the comparable price of any material covered by the Contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to this Contract for the duration of the Contract period (or until the price is further reduced). Such price reduction shall become effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., that was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, is not considered a "general price reduction" under this provision. The Contractor shall submit his or her invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the Contract documents. The Contractor in addition will, within ten days of any general price reduction, notify the Procurement Official of such reduction by letter. **FAILURE TO DO SO MAY REQUIRE TERMINATION OF THE CONTRACT.** Upon receipt of any such notice of a general price reduction, the Procurement Official will duly notify all ordering offices.

The Contractor, if requested, shall furnish, within ten (10) days after the end of the Contract period, a statement certifying either (1) that no general price reduction, as defined above, was made after the date of the bid, or (2) if any such general price reductions were made, that as provided above, they were reported to the Procurement Official within ten (10) days and ordering offices were billed at the reduced prices. Where one or more such general price reductions were made, the statement furnished by the Contractor shall include, with respect to each price reduction, (1) the date when notice of any such reduction was issued, (2) the effective date of the reduction, and (3) the date when the Procurement Official was notified of any such reduction.

20. **CHANGES, ADDITIONS, DELETIONS** - No changes, additions, deletions or substitutions of specifications, terms and conditions, quantity, unit of issue, delivery date, delivery charges, or price will be permitted without the prior written approval from the Purchasing Office of the Town of Herndon.

21. **CONTRACTUAL DISPUTES** - Contractual claims, whether for money or other relief, shall be submitted to the Procurement Official in writing no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file a claim for compensation above that required by the contract shall be given at the time of occurrence or beginning of work upon which the claim is based. If such notice is not given, any claim for additional compensation or time extension arising from or related to such occurrence or work shall conclusively be deemed waived. The Contractor shall continue performance during the pendency of any claim or dispute and following any decision thereon. The Procurement Official shall render a final decision on any such

claim within sixty (60) days of its submission or within one hundred twenty (120) days after final payment, whichever is later. Failure by the Procurement Official to render a decision shall be deemed a denial of the claim as of the latest date a response was required.

22. **QUOTATIONS TO BE F.O.B. – DESTINATION** - Quote F.O.B. DESTINATION for all competitive sealed bids. If otherwise, show exact cost to deliver.
23. **PRICING ERRORS** - In case of an error in price extension, the firm fixed unit price shall govern.
24. **TAX EXEMPTION** - The Town of Herndon is exempt from State Sales Tax and Federal Excise Tax. DO NOT INCLUDE TAX. Tax Exemption Certificate shall be furnished by Town of Herndon upon request. The Town's Federal Tax I.D. number is 54-6001349.
25. **ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR** - The Town does not guarantee any minimum or maximum quantities. Quantities as specified are approximate and are prepared for the solicitation. The exact quantities are as stated at time of order placement.
26. **SAMPLES** - Samples if required, must be furnished free of expense to the Town of Herndon on or before date specified; if not destroyed in examination, they will be returned to Bidder, if requested, at his expense. Each sample must be marked with Bidder's name and address, Town's request number and opening date.
27. **DELIVERY** - Bids must show number of days required to place material in using agency's receiving area under normal conditions. Failure to state delivery time obligates Bidder to complete delivery within 14 calendar days. A five (5) day difference in delivery promise may break a tie bid. Proposals must show the number of working days required to complete the service. This information should be stated even though a delivery date/schedule is contained in the solicitation. Unrealistically short or long delivery promised may cause bid to be disregarded. Consistent failure to meet delivery promises without valid reason shall constitute default and may cause removal from bid list. Delivery shall be made during normal working hours, Monday through Friday 8:30am - 5:00pm, unless otherwise specified in the solicitation or prior approval for another time period has been obtained.
28. **CONDITION OF ITEMS** - All items bid/offered shall be new, current model year, in first class condition, including containers suitable for shipment and storage, unless otherwise indicated in solicitation. The Town does not recognize verbal agreements in support of this requirement.
29. **SUBSTITUTIONS** - Substitutions or cancellations are **not** permitted without **prior written approval** from the Town of Herndon Purchasing Office.
30. **TOWN RIGHTS** - The Town reserves the right to accept or reject all or any part of bids/proposals, waive minor technicalities/informalities and award the contract to the lowest responsible bidder or most qualified and best suited Offeror to best serve the interest of the Town.
31. **ANTI-TRUST** - By entering into a contract, the Bidder/Offeror conveys, sells, assigns, and transfers to the Town of Herndon all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Town of Herndon under said contract.
Consistent and continued tie bidding could cause rejection of bids by the Procurement Officer or designee and/or investigation for Anti-Trust violations.
32. **INDEMNIFICATION** - The Contractor agrees to indemnify, defend and hold harmless the Town of Herndon, Virginia, its officers, agents, and employees from any claim, damages and action of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor or any services of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of

the using department or failure of the using department to use the materials, goods or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.

The vendor agrees to protect the Town from claims involving infringement of patent or copyrights.

33. **TIE BIDS** - If there is a tie for low bid and all other considerations are equal, and if the public interest will not permit the delay of re-advertising for bids, the award shall be determined by drawing lots in public.
34. **PROHIBITION AS SUBCONTRACTORS UNDER COMPETITIVE SEALED BIDDING** - No Bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded, or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
35. **CONTRACT DOCUMENTS** - The Contract entered into by the parties shall consist of those documents as listed on the cover sheet of this document.
36. **MULTIPLE AWARDS** - The Town reserves the right to award multiple contracts for all of the specified item(s) or service(s) to more than a single responsive and responsible bidder. The Town may, also, award multiple contracts to the lowest responsive and responsible bidder for each required good, service or equipment.
37. **METHOD OF PAYMENT** - For all transactions not made through a Town authorized credit card (purchase-card, p-card), the Town will provide an authorized purchase order. Upon satisfactory delivery of the merchandise and/or satisfactory completion of the services, the Contractor shall submit all invoices and statements with the referenced/associated purchase order number included to:

**TOWN OF HERNDON
ACCOUNTS PAYABLE
P.O. BOX 427
HERNDON, VA 20172-0427**

The prices and payments shall serve as full compensation for the labor, tools, equipment, transportation, overhead and all other incidentals necessary to complete the specified terms and conditions.

38. **PAYMENT** -

- a. The Contractor shall submit invoices for items ordered, delivered and accepted directly to the payment address shown above or on the purchase order.
- b. Any payment terms requiring payment in less than 30 days is regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. The Contractor shall bill all goods or services provided under this contract or purchase order at the contract price, regardless of which Town Department is being billed.
- d. **Unreasonable Charges.** It may become difficult to determine final job costs, accurately, at the time orders are placed under certain emergency procurements and for most time and material purchases. In such cases, Contractors are placed on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. The Town will research and challenge charges that appear as unreasonable, and will hold that portion of the invoice in abeyance until a settlement is reached. Upon determining that invoiced charges are not reasonable,

the Town shall promptly notify the Contractor, in writing, as to those charges that it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement is not reached within thirty (30) days of notification. The provisions of this section do not relieve the Town of its prompt payment obligations with respect to those charges that are not in dispute (Code of Virginia, § 2.2-4363).

39. **PAYMENT DATE** - The payment due date is established as forty-five days after receipt by the local government or its agent responsible under the contract for approval of such invoices for the amount of payment due, or thirty days after receipt of the goods or services, whichever is later.

Failure to pay by the payment date shall cause the Town to pay any finance charges assessed by the business concern that **do not exceed one percent (1%) per month.**

The Contractor can find further information regarding payment date and prompt payment by localities in subsections 2.2-4352 Code of Virginia (1950), as amended.

40. **ANTI-DISCRIMINATION** - By submitting their bids/proposals all Bidders/Offerors certify to the Town of Herndon that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act 1975, as amended, where applicable, and Section 2.2-4311 of the Virginia Public Procurement Act.

In every contract over \$10,000.00 the provision in 1 and 2 shall apply:

1. During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

(b) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

(c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to the purpose of meeting the requirements of this section.

2. The Contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

41. **INSURANCE** - Whenever any work and/or services are provided, either in or on Town owned property, the following shall apply:

a. The Contractor shall provide the Procurement Official with a Commonwealth of Virginia Certificate of Insurance PRIOR to the commencement of any work under the Contract and agrees to maintain such insurance until the completion of the Contract. The minimum limits of liability shall be:

1. Workers' Compensation--Standard Virginia Workers' Compensation Policy.

2. Broad Form Comprehensive General Liability--\$1,000,000 per occurrence coverage to include:

Premises - Operations; Products/Completed Operations; Contractual; Independent Contractors; Owners and Contractors Protective; Personal Injury (Libel, Slander, Defamation of Character, etc.);

3. Automotive Liability--\$1,000,000.00 per occurrence.

4. Professional Liability/Errors and Omissions

5. Profession/Services: Limits

Accounting	\$1,000,000 per occurrence, \$3,000,000 aggregate
Architecture	\$2,000,000 per occurrence, \$6,000,000 aggregate
Asbestos Design, Inspection or Abatement Contractor	\$1,000,000 per occurrence, \$3,000,000 aggregate
Health Care Practitioner	\$1,750,000 per occurrence, \$3,000,000 aggregate
Insurance/Risk Management	\$1,000,000 per occurrence, \$3,000,000 aggregate
Landscape/Architecture	\$1,000,000 per occurrence, \$1,000,000 aggregate
Legal	\$1,000,000 per occurrence, \$5,000,000 aggregate
Professional Engineer	\$2,000,000 per occurrence, \$6,000,000 aggregate
Surveying	\$1,000,000 per occurrence, \$1,000,000 aggregate

b. The Town reserves the right to require higher limits on any Contracts provided notice of such requirement is stated in the solicitation. The Town is to be named as an additional or co-insured. A thirty- (30) day written notice of cancellation or non-renewal shall be furnished by certified mail to the Procurement Official at the address indicated on the solicitation.

c. Contractor's signature of the solicitation constitutes his/her certification that, if awarded the Contract, he/she shall obtain the required coverage as specified above and proof of coverage as contained herein shall be submitted within ten (10) calendar days after notice of award. The Contractor's signature also signifies that this coverage shall be maintained for the duration of the Contract. "Claims made" policies must be in force or that coverage purchased for three (3) years after Contract completion date

42. **APPLICABLE LAWS AND COURTS** - Any Town contract is governed in all respects by the laws of the Commonwealth of Virginia, and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall be responsible for compliance with all the laws of the Commonwealth of Virginia, all ordinances and regulations of the Town of Herndon and such other standards, codes, and regulations having application to the work involved. The Contractor shall be responsible for securing all approvals and permits including occupancy and paying all charges bearing on the design and construction of a project. All permits shall be filed in the name of the Town of Herndon and shall be coordinated through the Director of Public Works.

43. **DEFAULT** - In case of failure to deliver goods and/or services in accordance with the contract terms and conditions, the Town of Herndon, after due written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy is in addition to any other remedies which the Town of Herndon may have.

44. **ASSIGNMENT OF CONTRACT** - Neither party shall assign contract without the **prior written** consent of the other party nor shall any contract be entered into or assigned to any party that is debarred from doing business with or in the Commonwealth of Virginia.

45. **VALID CONTRACT** - In order to validate any contract document entered into with the Town of Herndon, an authorized person as defined by the Town's Procurement Ordinance and Regulations shall execute it.

46. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH** - A Contractor organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required

by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the Contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

47. **IMMIGRATION REFORM AND CONTROL ACT OF 1986** - By entering into a written contract with the Town of Herndon, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
48. **DEBARMENT STATUS** - By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia or the Town of Herndon from submitting a response for the type of goods and/or services covered by this solicitation. Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia or the Town of Herndon.
49. **PRECEDENCE OF TERMS** - The following General Terms and Conditions, APPLICABLE LAWS AND COURTS, ANTI-DISCRIMINATION, ETHICS IN PUBLIC CONTRACTING, IMMIGRATION REFORM AND CONTROL ACT OF 1986, DEBARMENT STATUS, ANTITRUST, CLARIFICATION OF TERMS, PAYMENT shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
50. **QUALIFICATIONS OF (BIDDERS/OFFERORS)** - The Town of Herndon may make such reasonable investigations as deemed proper and necessary to determine the ability of the (Bidders/Offerors) to perform the services/furnish the goods and the (Bidder/Offeror) shall furnish to the Town all such information and data for this purpose as is requested. The Town reserves the right to inspect (Bidder's/Offeror's) physical facilities prior to award to satisfy questions regarding the (Bidder's/Offeror's) capabilities. The Town further reserves the right to reject any (bid/proposal) if the evidence submitted by, or investigations of, such (Bidder/Offeror) fails to satisfy the Town that such (Bidder/Offeror) is properly qualified to carry out the obligations of the contract and to provide the services and/or furnish the goods contemplated therein.
51. **TESTING AND INSPECTION** - The Town reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
52. **AVAILABILITY OF FUNDS** - It is understood and agreed between the parties herein that the Town shall be bound hereunder only to the extent of the funds available or that may hereafter become available for the purpose of this agreement.
53. **BID PRICE CURRENCY** - Unless stated otherwise in the solicitation, Bidders/Offerors shall state bid/offer prices in US dollars.
54. **DRUG-FREE WORKPLACE** - During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every

subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

55. **TAX EXEMPTION** – The Town is exempt from the payment of any federal excise or any Virginia sales tax. The Bidder must submit bid with net pricing, exclusive of taxes. However, when under established trade practice any federal excise tax is included in the list price, a Bidder may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, that is deducted by the Federal Excise Tax Exemption Number is **54-6001349**. Contractors located outside the Commonwealth of Virginia are advised that when materials are picked up by the Town at their place of business, they may charge and collect their own local/state sales tax. Materials used in the performance of construction Contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.
56. **DEBARMENT STATUS** – By submitting their bids, Bidders certify that they are not currently debarred from submitting bids on Contracts by the Town, nor are they an agent of any person or entity that is currently debarred from submitting bids on Contracts by the Town or any agency, public entity/locality or authority of the Commonwealth of Virginia.
57. **ETHICS IN PUBLIC CONTRACTING** – The provisions contained in Sections 2.24367 through 2.2-4377 of the Virginia Public Procurement Act, as set forth in the 1950 Code of Virginia, as amended, shall be applicable to all Contracts solicited or entered into by the Town. By submitting their bids/proposals, all Bidders/Offerors certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, Offeror, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
58. **NO CONTACT POLICY** – No Bidder shall initiate or otherwise have contact related to the solicitation with any Town representative or employee, other than the Purchasing Department, after the date and time established for receipt of bids. Any contact initiated by a Bidder with any Town representative, other than the Purchasing Department, concerning this solicitation is prohibited and may cause the disqualification of the Bidder from this procurement process.
59. **ADDENDA** – The Town will issue all addenda via Town Procurement webpage or EVA Commonwealth of Virginia webpage. All such addenda shall become a part of the solicitation documents, must be addressed in the bid/offer and shall become a Contract Document. The Town accepts no liability for late or non-receipt of addenda.
60. **CRIMINAL SANCTIONS** – The provisions referenced in Ethics in Public Contracting supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interest Act (§ 2.1-639.1 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions apply notwithstanding the facts that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.
61. **TERMINATION OF CONTRACTS** – Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:
- a. Terminated prior to expiration date by satisfactory deliveries of entire Contract requirements, or upon termination by the Town for Convenience or Cause.
 - b. Extended upon written authorization of the Procurement Official and accepted by

Contractor, to permit ordering of unordered balances or additional quantities at Contract prices and in accordance with Contract terms.

62. **TERMINATION FOR CONVENIENCE** – A Contract may be terminated in whole or in part by the Town in accordance with this clause whenever the Procurement Official shall determine that such a termination is in the best interest of the Town. Any such termination shall be effected by delivery to the Contractor at least thirty (30) days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the Contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

63. **TERMINATION OF CONTRACT FOR CAUSE** –

a. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his or her obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the Town shall thereupon have the right to terminate, specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the Contract shall, at the option of the Town, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

b. Notwithstanding the above, the Contractor shall not be relieved of liability to the Town for damages sustained by the Town by virtue of any breach of Contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the Town from the Contractor is determined.

64. **TERMINATION DUE TO UNAVAILABILITY OF FUNDS IN SUCCEEDING FISCAL YEARS** -

If funds are not appropriated or otherwise made available to support continuation of the performance of this Contract in a subsequent fiscal year, then the Town shall cancel the Contract and, to the extent permitted by law, the Town shall reimburse the Contractor for the reasonable value of any non-occurring costs incurred but not amortized in the price of the supplies or services delivered under the Contract.

65. **IMMIGRATION REFORM AND CONTROL ACT OF 1986** - By entering into a written contract with the Town of Herndon, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

66. **VIRGINIA FREEDOM OF INFORMATION ACT** – All proceedings, records, Contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:

- a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
- b. Any competitive sealed bidding Bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the Town decides not to accept any of the bids and to reopen the Contract. Otherwise, bid records shall be open to public inspection only after award of the Contract. Any competitive negotiation Offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are

completed but prior to award except in the event that the Town decides not to accept any of the proposals and to reopen the Contract. Otherwise, proposal records shall be open to the public inspection only after award of the Contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

c. Trade secrets or proprietary information submitted by a Bidder, Offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the Bidder or Offeror will submit proprietary information under separate cover. Offeror or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary. Bidders shall not mark sections of their bid as proprietary if they are to be part of the award of the Contract and are of a "Material" nature. The Town reserves the right to submit such information to its Town Attorney for concurrence of the Offeror's claim that it is in fact proprietary. References may be made within the body of the proposal to the proprietary information; however, all information contained within the body of the proposal shall be "public information" in accordance with State statutes.

d. Nothing contained in this section shall be construed to require the Town, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the Town.

67. **MODIFICATION OF CONTRACT** – the Procurement Official may upon agreement with the Contractor, issue a written modification to the Contract within the general scope thereof, during performance. However, no fixed-price Contract may be increased over the life of the Contract by amounts totaling more than twenty percent (20%) of the amount of the Contract or thirty thousand dollars (\$30,000) whichever is LESS without the advance written approval of the Town Council. In no event may an increase in the amount of any contract occur for any purpose without adequate consideration. Relief of a Bidder/Offeror from the consequences of an error in its bid/Offeror is prohibited without adequate consideration. Should it become proper or necessary in the execution of this Contract to make any change in design or to make any alterations that will increase the expense, the Procurement Official shall determine an equitable adjustment. The Town will make no payment to the Contractor for any extra material or services, or of any greater amount of money than stipulated as compensation in the Contract, unless some changes in or additions to the Contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by Contract amendment or otherwise furnished by the Procurement Official.

SPECIAL TERMS and CONDITIONS

68. **PRICING** – The subsequent Contract is a firm-fixed price agreement. In fulfilling the requirements of this initial Contract the fee(s) will remain firm and will include all charges that are incurred. See item 57 for renewal price changes.
69. **NEGOTIATION WITH LOWEST BIDDER** - Unless all bids are cancelled or rejected, the Town reserves the right granted by § 2.2-4318 of the Code of Virginia to negotiate with the lowest responsive, responsible bidder to obtain a contract price within the funds available to the agency whenever such low bid exceeds the department's available funds. For the purpose of determining when such negotiations may take place, the term "available funds" shall mean those funds that were budgeted by the department for this contract prior to the issuance of the written Invitation for Bids. Negotiations with the low bidder may include both modifications of the bid price and the Scope of Work/Specifications proposed for performance under the contract. The procurement agency shall initiate such negotiations by written notice to the lowest responsive, responsible bidder that its bid exceeds the available funds and that the department wishes to negotiate a lower contract price. Both parties shall agree on the times, places, and manner of negotiating by the department and the lowest responsive, responsible bidder.

70. **OMISSIONS & DISCREPANCIES** – Any items or parts of any equipment listed in this solicitation that are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications. Should a Bidder find discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, he or she shall notify the Procurement Official at least five (5) days prior to the date set for the opening of bids. If necessary, the Procurement Official will send a written addendum for clarification to all Bidders no later than three (3) days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five (5) days of the date set for opening of bids.
71. **PROHIBITION AGAINST UNIFORM PRICING** – The Procurement Official shall encourage open and competitive bidding by all possible means and shall endeavor to obtain the maximum degree of open competition on all purchase transactions using the competitive sealed bidding, competitive negotiation, or open market methods of procurement. In submitting a bid each Bidder shall, by virtue of submitting a bid, guarantee that he or she has not been a party with other Bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating Bidders. Any disclosure to or acquisition by a competitive Bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.
72. **LICENSE REQUIREMENT** – All firms doing business in the Town of Herndon are required to be licensed in accordance with the Town's "Business, Professional and Occupational Licensing (BPOL) Tax" Ordinance and the BPOL license number must be indicated on the bid/proposal form. Wholesale and retail merchants without a business location in the Town are exempt from this requirement. Direct any questions concerning the BPOL tax to the Finance Department, Revenue Office by calling telephone number (703) 435-6813.
73. **CONTRACTOR'S LICENSE REQUIREMENT** – As required under Title 54, Code of Virginia (1950) a Contract for construction, removal, repair or improvement of a building or other real property that exceeds one thousand (\$1,000.00) shall furnish the following:

Licensed Class A Virginia Contractor # _____ Specialty # _____
or

Licensed Class B Virginia Contractor # _____ Specialty # _____
or

Licensed Class C Virginia Contractor # _____ Specialty # _____

SPECIFICATIONS

74. **QUESTIONS CONCERNING SPECIFICATIONS** – Any information relative to interpretation of specifications and drawings shall be requested of the Procurement Official, in writing, in ample time before the opening of bids. Inquiries, if received by the Procurement Official within ten (10) days of the date set for the opening of bids, are not given any consideration. Any material interpretation of a specification, as determined by the Procurement Official, will be expressed in the form of an addendum to the specification which will be sent to all prospective Bidders no later than three (3) days before the date set for receipt of bids. Oral answers will not be authoritative.
75. **RENEWAL OF CONTRACT** – The Town may renew this contract for FOUR (4) successive one year periods under the terms and conditions of the original contract except as stated in 1 below. The Contractor may negotiate price increases only at the time of renewal. The Town will provide written notice of its intention to renew approximately 90 days prior to the expiration date of each contract period. 1. If the Town elects to exercise the option to renew the contract for an

additional one-year period, the contract price(s) for the additional one year shall not exceed the contract price(s) of the original contract increased/decreased by more than the percentage increase/decrease of the Washington-Baltimore All Items category of the CPI-W section of the Consumer Price Index of the United States Bureau of Labor Statistics for the latest twelve months for which statistics are available.

AWARD

76. AWARD OR REJECTION OF BIDS – The Procurement Official shall award the Contract to the lowest responsive and responsible Bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the Town to accept it. The Procurement Official reserves the right to award a Contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of the Town. To fulfill the anticipated requirements of the Town, the Procurement Official may award to as many Bidders as deemed necessary. If a Bidder is determined as a non-responsible Bidder, the Procurement Official also reserves the right to reject the bid of that Bidder. In determining the responsibility of a Bidder, the Procurement Official shall have recorded the reasons in the Contract file considering the following criteria:

- a. The ability, capacity and skill of the Bidder to perform the Contract or provide the service required;
- b. Whether the Bidder can perform the Contract or provide the service promptly, or within the time specified, without delay or interference;
- c. The character, integrity, reputation, judgment, experience and efficiency of the Bidder;
- d. The quality of performance of previous Contracts or services;
- e. The previous and existing compliance by the Bidder with laws and ordinances relating to the Contract or services;
- f. The sufficiency of the financial resources and ability of the Bidder to perform the Contract or provide the service;
- g. The quality, availability and adaptability of the goods or services to the particular use required;
- h. The ability of the Bidder to provide future maintenance and service for the use of the subject of the Contract;
- i. The number and scope of the conditions attached to the bid;
- j. Whether the Bidder is in arrears to the Town on debt or Contract or is a defaulter on surety to the Town or whether the Bidder's Town taxes or assessments are delinquent; and
- k. Such other information as may be secured by the Procurement Official having a bearing on the decision to award the Contract.

77. NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS – All award notices are issued by the Town to the successful Bidder and award notices are posted on the Town Procurement webpage. Updates such as procurement opportunities, addendum, short listed firms for RFP, notices of awards, etc are promptly posted to the webpage.

The following documents that are included in the solicitation are incorporated by reference in the resulting Contract and become a part of said Contract:

- a. Authority of Solicitation Form/Acceptance Agreement (Cover Sheet) and other documents which may be incorporated by reference, if applicable,
- b. General Conditions and Instructions to Bidders,
- c. Special Provisions and Specifications
- d. Pricing Schedule,
- e. Any addenda/amendments/Memoranda of Negotiations

78. **BID PRICES:** Bid shall be in the form of a firm unit price per service for each item during the contract period.

79. **ADDITIONS/DELETIONS** – The Town reserves the right to add similar items/services or delete items/services specified in the resultant Contract as requirements change during the period of the Contract. The Town and the Contractor mutually agree to prices for items/services to be added to the Contract. Contract amendments will be issued for all additions or deletions.

80. **SUBCONTRACTS:** The Contractor shall not subcontract any portion of the work without prior written consent of the purchasing agency. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the purchasing agency the names, qualifications and experience of their proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements

Subject to all State and local laws, policies, resolutions, and regulations and all accepted rules, regulations and limitations imposed by legislation of the Federal Government, bids on all solicitations issued by Town of Herndon will bind Bidders to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

81. **PAYMENT TO SUBCONTRACTORS** – A Contractor awarded a Contract under this solicitation and who is authorized to subcontract any portion of the work is hereby obligated:

a. To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Town for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; (or)

b. To notify the Town and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Town, except for amounts withheld as stated in b above. The date of mailing of any payment by U.S. mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Town.

82. **USE OF PREMISES AND REMOVAL OF DEBRIS:**

a. The Contractor shall:

(1) Perform his contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or with the work of any Contractor;

(2) Store his apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other Contractor; and

(3) Place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work.

b. The Contractor expressly undertakes, either directly or through his subcontractor(s), to effect all cutting, filling, or patching of his work required to make the same conform to the drawings and specifications, and, except with the consent of the owner, not to cut or otherwise alter the work of any other Contractor. The Contractor shall not damage or endanger any portion of the work or premises, including existing improvements, unless called for by the contract.

c. The Contractor expressly undertakes, either directly or through his subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials, and debris caused by his operations, to the end that at all times the site of the work shall present a neat, orderly, and workmanlike appearance. No such refuse, rubbish, scrap material, and debris shall be left within the completed work nor buried on the building site, but shall be removed from the site and properly disposed of in a licensed landfill or otherwise as required by law.

d. The Contractor expressly undertakes, either directly or through his subcontractor(s), before final payment, to remove all surplus material, false work, temporary structures, including foundations thereof, plants of any description and debris of every nature resulting from his operations and to put the site in a neat, orderly condition; to thoroughly clean and leave reasonably dust free all finished surfaces including all equipment, piping, etc., on the interior of all buildings included in the contract; and to thoroughly clean all glass installed under the contract including the removal of all paint and mortar splatters and other defacements. If a Contractor fails to clean up at the completion of the work, the owner may do so and charge for costs thereof to the Contractor.

e. During and at completion of the work, the Contractor shall prevent site soil erosion, the runoff of silt and/or debris carrying water from the site, and the blowing of debris off the site in accordance with the applicable requirements and standards of the Virginia Erosion and Sediment Control Handbook, latest edition, and of the contract documents.

f. The Contractor shall not operate or disturb the setting of any valves, switches or electrical equipment on the service lines to the building except by proper previous arrangement with the owner. The Contractor shall give ample advance notice of the need for cut-offs that the Contractor will schedule at the convenience of the owner.

83. **AUDIT** – The Contractor shall retain all books, records and other documents relative to this Contract for five (5) years after final payment, or until audited of Town, whichever is sooner. The Town shall have full access to and the right to examine any of said materials during said period.

84. **USE OF CONTRACT BY OTHER POLITICAL JURISDICTIONS** – Bidders are advised that the Town will extend all resultant Contracts, with the authorization of the Bidder, to the Metropolitan Washington Council of Governments jurisdictions and other jurisdictions and political subdivisions of the Commonwealth of Virginia to permit their ordering of supplies and/or services at the prices and terms of the resulting Contract. If any other jurisdiction decides to use the final Contract, the Contractor must deal directly with that jurisdiction or political subdivision concerning the placement of orders, issuance of the purchase order, contractual disputes, invoicing and payment. The Town acts only as the “Contracting Agent” for these jurisdictions and political subdivision. Failure to extend a Contract to any jurisdiction will have no effect on consideration of Contractors bid/proposal.

It is the awarded vendor’s responsibility to notify the jurisdictions and political subdivision of the availability of the Contract.

Each participating jurisdiction and political subdivision has the option of executing a separate Contract with the awardee. Contracts entered into with them may contain general terms and conditions unique to those jurisdictions and political subdivisions covering minority participation, non-discrimination. If, when preparing such a Contract, the general terms and conditions of a jurisdiction are unacceptable to the awardee, the awardee may withdraw its extension of the award to that jurisdiction.

The Town assumes no liability and is shall not be held liable for any costs or damage incurred by another jurisdiction as a result of any award extended to that jurisdiction or political subdivision to the awardee.

85. **WORK ESTIMATES (TIME AND MATERIAL CONTRACTS)** - Under this time and material contract, the Contractor shall furnish the department with a non-binding written estimate of the total costs to complete the work required. The estimate must include the labor category(ies), the Contractor's hourly rates as specified in the contract, and the total material cost. The Contract shall bill material costs at the Contractor's actual invoice costs (Contractor shall furnish copies of all invoices for materials) or discount off the list price, whichever is specified in the Contract. If the department determines that the estimated price is not fair and reasonable, the department has the right to ask the Contractor to reevaluate the estimate. If the revised estimate is determined as not fair and reasonable, the agency reserves the right to obtain additional quotes from other vendors. A work order will be issued to the Contractor, as the authority to proceed with the work, which will incorporate the Contractor's estimate and the terms and conditions of the contract. The Contractor and his/her personnel shall log in with the designated contract administrator each day before and after work to confirm labor hours.

ATTACHMENT H
State Corporation Commission Form

State Corporation Commission Form Virginia State Corporation Commission (SCC) registration information.

The bidder:

_____ is a corporation or other business entity with the following SCC identification number: _____

-OR-

_____ is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust

-OR-

_____ is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the bidder in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder's out-of-state location)

-OR-

_____ is an out-of-state business entity that is including with this bid an opinion of legal counsel which accurately and completely discloses the undersigned bidder's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

****NOTE**** >> Check in the following space if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for bids (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver): _____